IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 672 OF 2007
IN
STAMP NUMBER MAIN NO. 2365 OF 2007

SHRI. DENIS LOPES AND ANR., ... Applicants
Versus
FABRICA CHURCH OF ST. ANDREWS
(ADMINISTRATIVE BODY OF CHURCH)
THROUGH MANAGING COMMITTEE
PRESIDENT ... Respondent

Mr. G. Shirodkar, Advocate for the applicants.
Mr. M. C. Fernandes,Advocate for the Respondent.

Coram:- R. S. MOHITE, J.

Date:- 18th October, 2007

P.C.

This is an application for condonation of delay of 2 years 327 days in filing second appeal. The applicant states that the judgment and order was passed by the first appellate court on 5.7.2004. The certified copy was applied for on 8.7.2004. It was issued on 19.7.2004. The application further indicates that the applicant was aware that on 31.8.2004 the execution proceedings were filed by the respondent and the same came up for hearing on 23.11.2004.

It appears that instead of challenging the decree by filing second appeal immediately, although applicant had knowledge that the execution proceeding was pending, he filed application for stay of the decree in the execution proceeding on the ground that he had initiated independent proceeding of Mundkarship before the Mamlatdar. On 23.10.2006 said objection was rejected by the executing Court. Even then no second appeal was filed but another application was filed before the executing

Court on 5.9.2006 on the same ground. Similarly, on 12.9.2006, an application was made before the Mamlatdar seeking an order restraining the respondent from executing the impugned decree. Section 5 of the Mundkar Act does not permit the Government Officer like Mamlatdar to stay the decree of the Court and thus,on 5.12.2006, the Mamlatdar dismissed the application. Even at this stage, no second appeal was filed and the orders of the Mamlatdar were challenged by filing writ petition No.370/2007. This writ petition was dismissed by this Court on 2.8.2007 with liberty to file second appeal and by making it clear that question of limitation will be decided as per its own merits.

From the record, I find that the applicant has been fully aware of the decree which has been passed on 5.7.2004 and also of the execution proceeding filed on 31.8.2004. Instead of filing an second appeal, he has been filing applications in the executing Court which were totally untenable and one application was filed before the Mamlatdar with the decree prayer restraining the respondent from executing the decree which was also completely untenable. I find that both the lower Courts have passed concurrent judgment and decrees on the footing that applicant was a trespasser.

The applicant seeks to rely upon the judgment delivered by the Apex Court in the case of N. Balkrishnan Versus M. Krishnamurti, reported in (1998)7, S.C.C., 123 in which the Apex Court has held as under :-

Length of of delay was not relevant and in the absence of anything to show a malafide or deliberate delay as dilatory tactic, Court should normally condone the delay.

In this case, not only there is huge delay of 2 years and 327 days but the record also indicates that applicant has filed 3 untenable

applications before the authorities who had no jurisdiction, seeking the stay to the decree of the Civil Court. That in my view, amounts to using dilatory tactics to delay the execution of decree which was obtained from the Civil Court. No satisfactory justification is given about delay in filing second appeal. M.C.A. is therefore, rejected. Consequently, Second Appeal also stands rejected and to be filed.

R. S. MOHITE, J.

SMA